

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

PHILIP N. HOLLOWAY
DONNA M. QUINN

Case No. 98-17273

Debtor

In open court in Albany on March 25, 1999, I announced that I would sustain the Objection to the Plan provision that would prefer the restitution claim by paying it in full before other unsecured claims receive anything at all. I also announced (1) that I would explain that ruling in a writing, and (2) that I would invite the United States to ask for reargument on that issue.

I.

The restitution claim is a non-dischargeable claim which, unlike certain other non-dischargeable claims,¹ enjoys no distributive priority. Consequently, there is no statutory basis to view it as more deserving of payment than other dischargeable or non-dischargeable debts.

Additionally, it is a debt that arises out of the debtor's wrongdoing, and in bankruptcy theory in general, other creditors are not to suffer for the debtor's wrongdoing.

Also, one may not glibly presume that restitution claimants are the only "victims" of a debtor's wrongdoing. To the extent that charge accounts or lines of credit are invaded after

¹E.g., priority tax debts and alimony, maintenance and support arrearages.

the detection of the crime, the economic burdens of the criminal/wrongdoing may be shifted from the victims of the crime to those who extended credit to the wrongdoer without knowledge of the wrongdoing.

II.

That being said, true criminal process (as opposed, for example, to criminal process utilized solely for debt collection, such as criminal “bad check” charges) must never be interfered-with in bankruptcy proceedings. If the District Court is of the view that my decision impinges on the criminal process or on the sentence, I must and will defer thereto. If the U.S. Attorney seeks reargument on this issue, I will hear it.

SO ORDERED.

Dated: Buffalo, New York
April 1, 1999

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.